

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Merrill Paul Smith,

5 Plaintiff

6 v.

7 Sheriff Joe Lombardo, et al.,

8 Defendants

Case No.: 2:18-cv-00358-JAD-NJK

**Order Adopting Report and
Recommendation, Dismissing Action,
and Closing Case**

[ECF No. 13]

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10 Plaintiff Merrill Paul Smith brings this civil-rights lawsuit to redress constitutional
11 violations that he claims he suffered while detained at the North Valley Correctional Center and
12 Clark County Detention Center.¹ When Smith's mail from the court began to be returned in May
13 of this year, the Court ordered him to file a notice of changed address by July 1, 2019.² That
14 notice, too, was returned, Smith has not updated his address, and his mail continues to be
15 returned. So, the magistrate judge recommends that I dismiss this case without prejudice.³ The
16 deadline for objections to that report and recommendation passed without any filing from Smith,
17 and "no review is required of a magistrate judge's report and recommendation unless objections
18 are filed."⁴

19 District courts have the inherent power to control their dockets and "[i]n the exercise of
20 that power, they may impose sanctions including, where appropriate . . . dismissal" of a case.⁵ A
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22 ¹ ECF No. 1-1.

23 ² ECF No. 11.

24 ³ ECF No. 13.

25 ⁴ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas v. Arn*, 474
26 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

27 ⁵ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).
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1 court may dismiss an action based on a party's failure to prosecute an action, failure to obey a
2 court order, or failure to comply with local rules.⁶ In determining whether to dismiss an action
3 on one of these grounds, the court must consider: (1) the public's interest in expeditious
4 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
5 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
6 availability of less drastic alternatives.⁷

7 The first two factors, the public's interest in expeditiously resolving this litigation and the
8 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The
9 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
10 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
11 ordered by the court or prosecuting an action.⁸ A court's warning to a party that its failure to
12 obey the court's order will result in dismissal satisfies the fifth factor's "consideration of
13 alternatives" requirement,⁹ and that warning was given here.¹⁰ The fourth factor—the public
14 policy favoring disposition of cases on their merits—is greatly outweighed by the factors
15 favoring dismissal.

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19 ⁶ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
20 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
21 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
22 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
23 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

24 ⁷ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
25 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

26 ⁸ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 ⁹ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 ¹⁰ ECF Nos. 11, 13.

1 Accordingly, with good cause appearing and no reason to delay, IT IS HEREBY
2 ORDERED that the Report and Recommendation [ECF No. 13] is **ADOPTED**, and **this case is**
3 **DISMISSED** for failure to file a notice of changed address as directed by the court. **The Clerk**
4 **of Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS CASE.**

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U.S. District Judge Jennifer A. Dorsey
Dated: July 23, 2019